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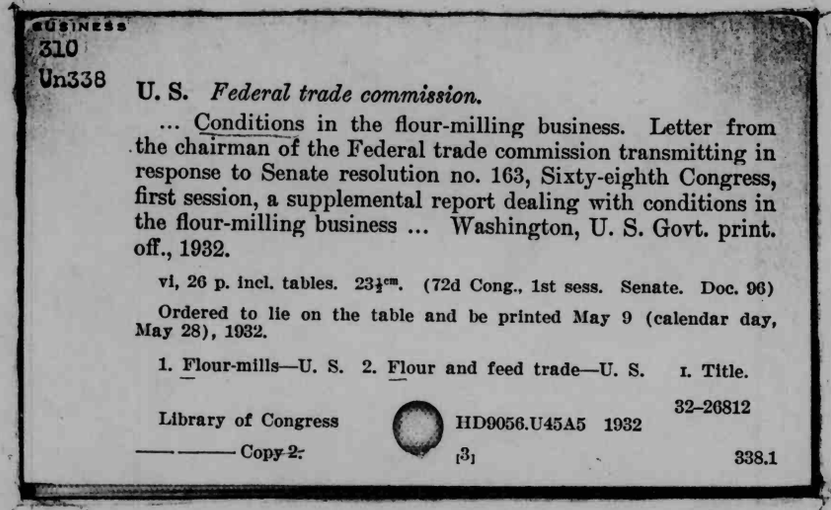

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CONDITIONS IN THE FLOUR-MILLING BUSINESS

LETTER

FROM

THE CHAIRMAN OF THE FEDERAL TRADE COMMISSION

TRANSMITTING

IN RESPONSE TO SENATE RESOLUTION NO. 163, SIXTY-EIGHTH CONGRESS, FIRST SESSION, A SUPPLEMENTAL REPORT DEALING WITH CONDITIONS IN THE FLOUR-MILLING BUSINESS

This is the fourth volume transmitted pursuant to this resolution of the Senate, the first volume, Baking Industry Combines and Profits was printed as Senate Document No. 212, Sixty-ninth Congress. The second volume, Competitive Conditions in Flour Milling, was printed as Senate Document No. 97, Seventieth Congress. The third volume, Competition and Profits in Bread and Flour, was printed as Senate Document No. 98, Seventieth Congress

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LETTER OF TRANSMITTAL

FEDERAL TRADE COMMISSION,
Washington, D. C., May 28, 1932.

PRESIDENT OF THE UNITED STATES SENATE,
The Capitol, Washington, D. C.

SIR: I have the honor to transmit herewith a supplemental report of the Federal Trade Commission made in response to Senate Resolution 163, Sixty-eighth Congress, first session, relating to that portion of the resolution dealing with conditions in the flour-milling business.

By direction of the commission.

W. E. HUMPHREY, *Chairman.*

LETTER OF SUBMITTAL

FEDERAL TRADE COMMISSION,
Washington, May 28, 1932.

The PRESIDENT OF THE SENATE:

This supplemental report of the Federal Trade Commission on competition in the flour industry is submitted in compliance with Senate Resolution No. 163, Sixty-eighth Congress, first session, which directed, among other things, an inquiry into "the production, distribution, transportation, and sale of flour and bread, including by-products, and report its findings in full to the Senate, showing the costs, prices, and profits at each stage of the process of production and distribution, * * * the extent and methods of price fixing, price maintenance * * *," etc.

The last and principal report hitherto submitted to the Senate on this subject was made under date of January 11, 1928, namely, a report on competition and profits in bread and flour. The reason that a supplementary report is submitted at this time is that, following the service of certain subpœnas on the secretary of the Millers' National Federation and others, in April, 1926, to appear and produce certain documentary evidence, pertinent to the above-mentioned inquiry ordered by the Senate, and on the day before the date of the hearing, a petition for a temporary injunction against such proceeding was filed in the Supreme Court of the District of Columbia, which injunction was granted by the court on the next day. From that time the matter was in the courts until February 2, 1931, when the Court of Appeals of the District of Columbia reversed the decision of the lower court, which was duly followed by a decree in the lower court, dated March 10, 1931, setting aside and vacating the injunction. The Millers' National Federation and the other original respondents in the subpœna proceedings then satisfied the commission by the delivery of certain papers, namely, certain documentary evidence of the Millers' National Federation and a certain accounting statement of the business of the Washburn-Crosby Co., which had been prepared by examiners of the commission with the consent of the company, but which the company had taken from them.

The information presented in this report comprises, therefore, first, additional documentary evidence regarding competitive conditions among the flour millers and, second, more comprehensive information regarding the investment and profits of the flour millers; that is, amplified by the inclusion of the data for the Washburn-Crosby Co., the largest flour milling company in the country during the period in question.

The inclusion of the additional financial data does not greatly change the results as to average rate of return on investment which is shown to be somewhat higher by this addition, though the investment per barrel of output is considerably reduced.

By the commission.

W. E. HUMPHREY, *Chairman.*

CONDITIONS IN THE FLOUR-MILLING BUSINESS

SUPPLEMENTAL REPORT ON COMPETITION IN THE FLOUR INDUSTRY

Scope of supplemental report.—This supplemental report is based upon documents requested in 1925, subpœnaed in 1926 and delivered in 1931 after long litigation initiated by the Millers' National Federation on behalf of its officers and members. The last decision in this litigation was rendered in February, 1931, by the Court of Appeals of the District of Columbia, in favor of the commission.

Lack of these documents prevented a timely complete report to the Senate in response to Senate Resolution 163, adopted February 16, 1924.

However, a preliminary report on competitive conditions in flour milling was made on May 3, 1926, and was revised and became Part II, pages 339–449 in the Report on Competition and Profits in Bread and Flour, made January 11, 1928.

The present supplemental report is based upon the new material, referred to above, and develops chronologically the work done by the Millers' National Federation to restrict competition.

Profits and costs of 91 flour milling companies, 1923–24.—In the reports already issued, profits and costs for 1923 and 1924 were shown for 90 milling companies combined, but figures for Washburn-Crosby Co. were not included, as this company had refused to give up a report containing them, even though this report had been made up by examiners of this commission. (See p. 25.) However, the report was given up after the decision of the Court of Appeals of the District of Columbia in the Millers' National Federation case.

In the following pages, are given revisions of certain important profits and cost tables for 1923 and 1924, to include the figures of Washburn-Crosby Co. now available.

But first there is shown, for the 91 companies, including Washburn-Crosby Co., the total production of wheat flour and the total quantity sold in 1923 and 1924, using crop and calendar years combined:

Crop and calendar years combined	Barrels produced	Barrels sold
1923	39,478,730	40,702,137
1924	39,455,215	40,969,409
Average	39,466,972	40,835,773

The production of wheat flour by these 91 companies averaged nearly 40,000,000 barrels per year, or about 36 per cent of the total production of the country, which, as reported by the census for the calendar year 1923 was 114,438,544 barrels.

The following table shows the net profits per barrel of the 91 flour milling companies:

TABLE 1.—*Value of sales, costs, and expenses of sales, and net income per barrel of flour for the entire business of 91 flour milling companies, including Washburn-Crosby Co., for the two years 1923 and 1924*

[Crop and calendar years combined]

Year	Value of sales [1]		Costs and all expenses		Net profit [3]	
	Amount	Per barrel	Amount	Per barrel	Amount	Per barrel
1923	$240,627,564.00	$5.91	[2] $232,657,964.00	$5.71	$7,969,600.00	$0.20
1924	234,335,050.00	5.72	[2] 224,331,076.00	5.48	10,003,974.00	.24
Average	237,481,307.00	5.82	[2] 228,494,520.00	5.60	8,986,787.00	.22

[1] Sales of flour only—sales of by-products are not included.
[2] Costs and selling expenses, including miscellaneous operating losses (less gains) and interest on bonds and borrowed money, less gains from outside investments and less credits for by-products.
[3] Before deduction of Federal income tax.

The net profit per barrel for the 91 companies increased from 20 cents per barrel in 1923 to 24 cents per barrel in 1924, which is a percentage increase of 20 per cent.

The average net profit for the two years combined was 22 cents per barrel.

The following table shows the financial results of the 91 flour milling companies:

TABLE 2.—*Investment, net profit, and rate of return for entire business of 91 flour-milling companies, including Washburn-Crosby Co., for the two years 1923 and 1924*

Year	Investment [1]		Net income [2]		Rate of return
	Amount	Per barrel	Amount	Per barrel	
1923	[1] $99,769,084.00	$2.45	$7,969,600.00	$0.20	8.0
1924	[1] 102,544,342.00	2.51	10,003,974.00	.24	9.8
Average	[1] 101,156,713.00	2.48	8,986,787.00	.22	8.9

[1] The sum of the capital stock, surplus, and surplus reserves.
[2] Before deduction of Federal income tax.

The rate of return on investment for the 91 companies increased from 8 per cent in 1923 to 9.8 per cent in 1924, and averaged 8.9 per cent for the two years combined. This was on an average investment of $2.48 per barrel of flour sold.

The rate of return for 90 companies, not including Washburn-Crosby Co., as shown in the report on Competition and Profits in Bread and Flour, 1928, page 427, was 8.1 per cent in 1923 and 8.8 per cent in 1924, with an average of 8.5 per cent for both years combined. This was on an average investment of $2.76 per barrel of flour sold.

Thus the financial results after including Washburn-Crosby Co. showed a lower investment per barrel with a higher rate of return.

Meeting of federation, October 12, 1923.—Some of the matters taken up at this meeting are discussed on pages 350, 353, 358, 362, 396, and 399 of the report on Competition and Profits in Bread and Flour, 1928.

Additional information regarding this meeting, which was delivered by the Millers's National Federation in April, 1931, is given below.

The first reference available in regard to the regular semiannual meeting in October, 1923, of the federation is contained in a letter of August 27, 1923, from Charles L. Roos, president, to A. P. Husband, secretary, of the federation. This letter is rather unenthusiastic about the forthcoming meeting, reading, in part, as follows:

> As to our semiannual meeting in October. I would favor forgetting all about this. There is nothing of importance to bring up before the meeting. Millers have attended all kinds of relief meetings during the summer months and I do not think any of them would enjoy holding a wake in October. Why couldn't we just as well as not pass this up and in place of it send a cheerful letter of information to our members?

Having learned that the holding of the October meeting was compulsory, Mr. Roos wired Mr. Husband, on August 31, 1923, to "work up a real program and send out notice of meeting in ample time."

Mr. Husband replied on September 1, 1923, to Mr. Roos's wire, writing in part:

> I received your wire of yesterday in regard to the semiannual meeting and note that a letter is to follow. I assume that in the letter you will advise whether you think it best to follow the plan we have recently followed of having the meeting extend over two days with a morning session only on the first day. To be frank with you, I do not know what there is to take up that much time unless we open up for discussion such questions as the new combinations for buying that have been formed by bakers throughout the country. Mr. Eckhart has asked that we submit to federation counsel the legality of some action on the part of the federation recommending mills to confine operations to 12 hours per day. This is strictly between you and me until we get legal advice from Reed and Rogers.
>
> * * * * * * *
>
> If we are to take up subjects like those suggested in the first pargraph of this letter it should be done only in executive session with nobody present but millers.
>
> If you have any other suggestions for making the program of interest and value please let me have these suggestions because outside of the general complaint of poor business, there is no large subject that suggests itself to the writer.

In a letter of August 31, 1923, from Mr. Roos to Mr. Husband, he had written, in part, as follows:

> Perhaps it would be well for you and I to get together and discuss the program before you send out your letter. It is not convenient for me to go to Chicago at this time, but I would make it convenient to meet you in Kansas City sometime next week, and we might arrange to have meet with us some or all of the Kansas City millers and also the representatives of the trade press, get their opinion, receive their suggestions, and then consult with Minneapolis, the Ohio bunch, St. Louis, and of course with all of our directors. * * *.

The work of Mr. Roos among the other millers in preparation for the federation meeting is described as follows, in a letter of September 29, 1923, from Mr. Roos to Mr. Husband, reading in part, as follows:

> Am writing to-day to B. A. Eckhart, H. L. Beecher, Chas. B. Jenkins, Edgar H. Evans, T. S. Blish, Julius Postel, A. R. Kinney, H. K. Schaefer, Mark Mennell, L. A. Valier, Fred J. Lingham, W. L. Sparks, Sam Plant, George P. Urban,

C. M. Jackman, L. R. Hurd, A. C. Loring, J. F. Bell, H. S. Helm, and E. M. Kelly urging them to attend meeting October 12 and hope they will respond favorably.

It is my intention to leave here to-morrow night for Kansas City and be there Monday and Tuesday, return to Wellington Wednesday morning and remain here until the following Tuesday evening, November 9 (October 9), be in Kansas City the 10th and in Chicago the morning of the 11th.

Have promise of assistance from Harry Helm and am sure he will line up the balance of the Minneapolis contingent.

On October 1, 1923, Mr. Husband sent out a letter to 58 millers inviting them to attend the meeting of October 12, 1923. This letter was, in part, as follows:

The officers of the federation are depending upon you to attend the semi-annual meeting of the federation, in the East Room, Hotel La Salle, Chicago, on Friday, October 12, and to participate in a frank discussion of the present unsatisfactory conditions in the industry, and to offer suggestions for improvement in these conditions. It will be a meeting of millers, to discuss milling problems; this discussion will be the first item on the program, and we request that you be present promptly at 10 o'clock, so the meeting can be called to order on time.

On October 2, 1923, Mr. Roos wrote to Mr. Husband regarding the meeting of October 12, in part, as follows:

Kansas City seemed very much interested. They have about decided to call a meeting of local millers and some from the Southwest, and have also written to the Northwest with a view of meeting in Chicago on Thursday and formulating a plan. I suggested that it might be better to defer the Chicago meeting until Saturday and try and learn what will develop in the Friday meeting. Am of the opinion that the Washburn-Crosby Co. will follow its usual policy. They will not propose anything but will be in a receptive mood and if proposals appeal to them and there is no legal obstacle they will join with the others.

On October 6, 1923, Mr. Lingham wrote Mr. Husband about the Washburn-Crosby Co.'s price policy, as follows:

You may be interested in knowing that Washburn-Crosby have definitely adopted a policy of holding firm on price. Their prices are not high by any means, but they are not accepting the low offers that they are inclined to accept at times.

I have it on good authority that they are holding firmer on prices than they have done before in some years.

Reference has already been made to the discussion of matters taken up at the meeting of October 12, 1923. (See p. 3 of this report.)

A summary of this meeting was prepared by Mr. Husband and sent out to more than 1,200 members of the federation on October 25, 1923. In preparing this summary report, Mr. Husband consulted Mr. Roos and Mr. Eckhart as is shown in the correspondence between Mr. Husband and Mr. Roos.

In a letter of October 16, 1923, Mr. Roos suggested to Mr. Husband that the stenographic report of the meeting be summarized and mailed to members:

It occurs to me that you might, in going through the stenographic report of the meeting, strike some parts of remarks that will appeal to our members and that it would be worth while to print a little leaflet containing suggestions or thoughts and mail them to members * * *.

Before receiving Mr. Roos's letter, Mr. Husband had made up a report of the meeting, a draft of which he sent to Mr. Roos in a letter of October 16, 1923, stating in the letter:

I am inclosing herewith for your approval my idea of what we should print in the nature of a report of our meeting last Friday; of course the officers and committee reports will be printed, but I refer particularly to that portion which embodies the discussion and which you stated would not be printed.

On October 18, 1923, Mr. Roos wired Mr. Husband as follows: "Approve report for publication."

In the meantime, Mr. Eckhart had called and consulted Mr. Husband about the report, especially about a price reporting plan, and Mr. Husband wired Mr. Roos on October 18, 1923, as follows:

Reference your telegram Eckhart feels so strongly on subject of Sterling plan that if possible wish to avoid adverse criticism therefore suggest that we eliminate the entire plan but state in a separate paragraph that there was submitted to the meeting a plan for classifying sales for the information of mill managers and that if any miller was interested we would send him a copy of the plan upon request stop I feel this is the best way out of what might lead to a bad situation stop * * *.

The Sterling referred to is R. E. Sterling, Kansas City, Mo., then secretary of the Kansas City Millers' Club, and Southwestern editor of the Northwestern Miller.

Mr. Roos replied by wire immediately, as follows, to Mr. Husband's wire of October 18, 1923:

Agree with Eckhart on possible effect publishing Sterling plan. However, it is entitled to publicity same as other suggestions. Might take the curse off by calling the second and third clauses the danger signals.

On October 18, 1923, Mr. Husband wired Mr. Roos again regarding the Sterling plan:

Wire received Eckhart called this morning and read proposed report and saw for first time Sterlings plan and expressed a wish that it be eliminated as offering first a basis for buyers in class A to object to carrying burden of other classes. Second, it conveyed suggestion to millers that they might experiment with class C hoping for average from other classes. Eckhart feels strongly it should not be published in proceedings as balance of report offers helpful suggestions and he is wiring Sterling requesting him not to publish in paper. Had we better not eliminate plan and confine report to short paragraphs sent you.

Finally, Mr. Husband wrote Mr. Roos a letter on October 18, 1923, regarding this matter as follows:

I am sorry to trouble you so much regarding the report of the meeting, but Mr. Eckhart felt very strongly indeed that it would be a mistake to publish the Sterling plan as a proposed remedy. As he analyzes it the effect would be just the reverse of what it was intended to do. In view of this I took the liberty this evening of wiring you again suggesting that reference be made to such a plan having been offered and if any miller desires a copy we can sent it to him upon request.

On October 18, 1923, Mr. Roos wrote to Mr. Husband as follows regarding the report:

In a general way I approve of report as received this morning. Think there might be little changes in the wording of some of the sections so as to soften them. For example, on page 3, paragraph 3, referring to securing information from competitors before accept ng reports as facts, have it read something like this: Millers should have faith in each other and instead of accepting unconditionally reports as to selling prices and terms, have them verified by telegraphing or telephoning to, and trying to ascertain facts from, the one accused of uncommercial practices.

The above is simply a suggested change in expression. I would leave out the words "brokers and salesmen" simply because you might be doing an injustice to those brokers and salesmen who are not in the habit of sending in depressing reports.

The "A B C" plan does not appeal to me. However, I feel that it was presented as a cure and is entitled to the same consideration as other suggestions that were made during the meeting. It may not be necessary to quote it verbatim and it probably will be well to add a note suggesting that it is not the intention of this plan to make sales in class C, and that class B is offered only as a necessary evil,

and that these last two classifications are intended to call attention of the mill owner and the sales manager to the sacrifice caused by making either class sale.

I don't think you can get out any report that will be satisfactory and agreeable to every member, and it was for that reason as much as any that I felt as long as you would bear the brunt of criticism you should do the selecting of the items entering into the report. Am of the opinion you present very fairly the expressions made by various members as I recall them.

The next day, October 19, 1923, Mr. Roos wired Mr. Husband as follows:

Offering furnish Sterling plan on application just as harmful as publishing in proceedings. Instead of giving two pages to same would condense to one paragraph suggesting classified record of sales be kept to act as daily reminder. Wrote you yesterday suggesting this * * *.

Following the meeting of October 12, 1923, it was decided that the federation should employ E. S. Wagner, Minneapolis, Minn. In regard to this matter, Mr. Husband wrote to Mr. Roos on October 17, 1923, as follows:

Mr. Wagner has spent most of to-day with me and we have gone over the tentative plans for his coming to the federation on the basis which you gave me on last Saturday. I have said to Mr. Wagner that it is important that before any announcement shall be made that Mr. Bell or some other official of Washburn-Crosby Co. shall be first informed of the plan of his coming with the federation. He is leaving to-night for Minneapolis with the idea of at once seeing Mr. Bell or Mr. John Crosby (preferably the former) and explaining the situation. If entirely satisfactory to them he will wire me and we will then give the necessary notice to the milling papers and advise all the members of the board of directors.

The next day, October 18, 1923, Mr. Husband again wrote to Mr. Roos about Mr. Wagner as follows:

Mr. Wagner's wire to-day was in accordance with my statement to him that before the deal was closed he wanted it perfectly well understood by the officials of Washburn-Crosby Co. that he was coming here and I suggested to him that he see Mr. Bell and Mr. Crosby to-day and wire me. He advises that both approved heartily of the movement. Unless I hear from you to the contrary tomorrow I will therefore give the item to the milling papers and write to the directors.

Discussion of the A B C plan came up again in a letter of November 12, 1923, from Mr. Roos to Mr. Husband, as follows:

* * * It is unfortunate that the "A B C" plan was not discussed in the meeting. The probability is that considerable opposition to it would have developed. I do not think it will do the damage that Mr. Eckhart imagines it will. It is my opinion that if the salesmanager or the mill owner has brought to his attention day after day sales made at an absolute loss, he will be quite likely to do some thinking and figuring and come to the conclusion that sales at a loss are always a loss and that the only way to make a profit is to ask more than cost for your goods. While a college education is not to be despised, it is the school of hard knocks that leaves a lasting impression on the mind and memory of man.

Adherence to proper ethics is indicated in a letter of December 18, 1923, from James F. Bell, vice president of Washburn-Crosby Co. to Mr. Husband:

Mr. Estee has written you on the matter and I trust you are satisfied with our action. If so, I would suggest that you give the necessary publicity to complaining sources to know that this Company has every desire to adhere to the proper ethics in the sale of our products.

The changed price policy of a large miller between June and December, 1923, is described in a letter of December 28, 1923, from Fred J. Lingham, of the Federal Mill & Elevator Co., Lockport, N. Y., to Mr. Husband:

When the constructive attitude of one of our large friends is mentioned, the reply often is that in June they did such and such things. These same men have to admit, however, that they do not know of their doing these things in recent months, and this brings out a confession that it may be possible that they have reformed. I personally and definitely believe they have. It is not what they did last June that counts. It is what they are doing now, and what we hope they will continue to do in the future, that we should think of.

Beginning with December, 1923, on occasion of the opening of the session of Congress, the Federation employed Edward H. Causey, manager of the Washington Bureau of the Modern Miller, a leading trade paper published in Chicago. In acknowledging receipt of a check for $50, Mr. Causey, on January 2, 1924, wrote to Mr. Husband, in part, as follows:

Received your letter this morning containing voucher check for $50, for which I wish to express my sincere thanks. I do not see how the National Federation has received $50 worth of service up to the present, but later on I am sure I can make this service well worth the price the federation is paying for it.

Meeting of federation, January 15, 1924.—Some of the matters taken up at this meeting are discussed on pages 358, 360, and 365 of the report on Competition and Profits in Bread and Flour, 1928.

Additional information regarding this meeting, which was delivered by the Millers' National Federation in April, 1931, is given below:

Regarding his intention to attend the federation meeting of January 15, 1924, James F. Bell, vice president of Washburn-Crosby Co., Minneapolis, Minn., wrote to Mr. Husband on January 3, 1924, as follows:

I have your letter regarding the meeting on the 15th, and as I have written you and Mr. Roos, I have every intention of being there. However, it is fully understood I will accept no appointment on any committee, nor will I take an active part. I am willing to come, listen, learn, and to support any constructive program that is outlined.

In regard to the same matter, A. C. Loring, president of Pillsbury Flour Mills Co., wrote to Mr. Husband on January 2, 1924, as follows:

I am in receipt of your favor of the 31st ultimo, and it is my intention now to be present at the meeting on January 15. I hope you will succeed in getting Mr. Walker, Mr. Helm, and Mr. Bell, also to be present at that time, because on them depends very largely the possibility of the success of any forward movement.

In regard to the same matter, H. S. Helm, of the Russell Miller Milling Co., wrote to Mr. Husband on January 9, 1924, as follows:

I have yours of the 4th reminding me of the meeting on January 15. I am planning to attend and am much pleased to note that Mr. Loring and Mr. Bell will be on hand. Because of their prominence and the size of their business it is quite impossible to get full benefit from an experience meeting without them. I hope that Mr. A. B. Walker can likewise be present.

In reply to the above letter, Mr. Husband wrote on January 10, 1924, as follows:

I have your favor of 9th instant and am pleased to note that you will be with us on next Tuesday January 15. Charlie Roos is here to-day and also expresses pleasure at hearing that you will attend. I have been advised by Mr. Bell and Mr. Loring that they will come down on next Monday night and while in New York this week Charlie Roos called on A. P. Walker who has likewise promised to attend.

Questions regarding the legality of a price-reporting plan were raised in a letter of January 7, 1924, from Bernard J. Rothwell, to Mr. Husband, reading, in part, as follows:

Hope to see you Tuesday of next week, January 15 1924. In the meanwhile may I suggest for your consideration that you inquire from Messrs. Reed and

Rogers as to the legality of a plan by which millers, having already named a selling price to a buyer, would notify a central office—clearing house, if you will—the price named without specifying either the quantity or the name of the buyer but merely the class in which the buyer had been placed; that is, there might be 25 or more class A buyers, 50 or more class B buyers, etc. The central auditor, or clearing-house official, would report daily by mail or telegraph to the various mills that had agreed to this reporting plan, the prices which had been made during the day by mills in the different classes to buyers in different classes. It would all be impersonal, as neither the name of the mill nor the name of the buyer would be disclosed—in fact, could not be by the auditor, because he would not be informed by the mill making the price. He would simply know that a mill of a certain class had quoted a buyer of a certain class a price.

I outlined for you and for Mr. Roos a year or so ago some scheme of this sort. What I want to get at is—if a feasible scheme, acceptable and beneficial to the millers, could be worked out whether it would be illegal. My own impression is that merely reporting a price already made and being informed later as to competing prices to buyers of similar class would not violate existing laws.

The Millers' National Federation meeting of January 15, 1924, was attended by James F. Bell, vice president of Washburn-Crosby Co. and by A. C. Loring, president of the Pillsbury Flour Mills Co., neither of whom had attended the Federation meeting on October 12, 1923.

Reference has already been made to the discussion of matters taken up at the meeting of January 15, 1923. (See p. 7 of this report.)

A summary report of this meeting was made up by Mr. Husband for members. Regarding this summary, Mr. Husband, on January 18, 1924, wrote Carl W. Sims, of the Sims Milling Co., Frankfort, Ind., in part, as follows:

In making up a brief summary of Tuesday's meeting, which will reach you within a day or two, I did not say anything about your suggestion of forming a "Twelve-Hour Club." While I think the suggestion has merit, I question the advisability of publishing anything about it, as it might be interpreted as a move to restrict production. It is one of those things that is all right enough to discuss in a meeting and to talk about among millers, but I doubt the advisability of publishing it.

Mr. Sims replied on January 21, 1924, in part, as follows:

Your apology is accepted. In suggesting the "Twelve-Hour Club," I had in mind getting something definite before the meeting so that the suggestions made by the various members might be retained in some form. The "Twelve-Hour Club" as I had it in mind would not restrict production, nor fix prices. There would simply be a moral obligation on the part of the members of the club to figure cost of production on what statistics show to be the average production of all the mills. While it would tend to elevate prices, it would not make for uniformity, nor would it restrict production because mills would naturally hold to what profitable business they now have or could get.

Meetings of the "Twelve-Hour Club" could be held and informal discussions indulged in such as we have had at the two recent meetings.

Referring to the meeting of January 15, 1924, Mr. Roos wrote to Mr. Husband on January 19, 1924, in part, as follows:

I wonder what the results of Tuesday's meeting will be? Was unable to learn how it impressed the majority of those present. Some seemed to think that good would result, and on the other hand there were some who thought that nothing had been done or accomplished and who seemed to be of the opinion that nothing could be accomplished except by a financial combination. I am hopeful that continued agitation along the lines of the last two meetings will result in obtaining better business methods and better business conditions.

Mr. Rothwell on January 30, 1924, wrote to Mr. Husband as follows:

Before taking the matter to the Federal Trade Commission, even formally, would it not be well for Mr. Roos to feel out Messrs. Bell, Loring, Helm, and Gallagher as to their willingness to make use of such central bureau of information as I have roughly outlined?

If they were entirely opposed it is doubtful whether it would be worth while to go ahead, although this is a question that would better be determined by sounding out a large number of the more prominent millers outside of the Minneapolis group.

I am inclined to think it would find favor in the Southwest, and I am quite sure it would in the Middle West, because through the Southeastern Miller's Association, the millers are familiar with methods of this sort.

While the situation is somewhat better than several months ago, there are still sporadic cases of indefensible price cutting and, strangely enough, by mills that until comparatively recently, stood out for a living price, and a fair profit.

Shall be glad to hear from you in the event of any new development along this line. I am satisfied that mere conferences and protestations of future virtue will not accomplish the results upon which the salvation of the rank and file of the milling industry depends.

Mr. Husband, on January 31, 1924, wrote to Edward H. Causey, who had been employed by the federation in December, 1923 (see p. 7), as follows:

Inclosed please find federation voucher check No. 296 for $50 in payment of your services to Committee on Legislation for January, 1924. Kindly sign inclosed receipt form and return at your convenience.

In a letter of February 1, 1924, E. S. Wagner, of the federation's staff, gave John W. Burns, of the Kelsay-Burns Milling Co., Evansville, Ind., a summary of the federation, as follows:

The Millers' National Federation was organized in 1902 and a number of concerns who were active in its formation are still members. As a matter of fact all those who are still in business are still members, which in itself is somewhat of a recommendation. It is a clearing house for the activities of the milling interests of the country, having a membership of 1,400 located in 33 States, extending from coast to coast and, moreover, practically all of the State millers' associations are affiliated with it. It has a standing at Washington which is of considerable value to the general milling interests in that the various bureaus look to the federation for information and advice and consult with the officers of the organization on things that pertain to milling, both domestic and foreign.

It also is able to confer with the various State agricultural departments to advantage as the various State officials have confidence in the organization.

Some years ago it instituted what is known as the Millers' National Federation price differential for flour packages and these differentials have really become accepted as official throughout the country.

At the present time it is quite active in inducing or trying to induce its members to get their business on a more satisfactory basis by first knowing what it costs to manufacture flour and secondly to get a price for flour that will cover not only the cost but some margin of profit as well. Two meetings have been held, one in October and the second in January under the auspices of the federation, at which all millers were invited whether members or not, to meet and consult ways and means for improving the price situation and general milling conditions. Both were very effective and the trade to-day are giving no little thought to these matters and the federation will continue to foster further study and effort to bring about improved conditions.

Among other data we are sending you is a cost chart which has been adopted by a number of mills as a means of determining their costs of producing flour and this may be of interest to you.

As to the activities of the federation, I would like to call your attention to page 466 of this week's issue of the Northwestern Miller in connection with matters that Mr. Husband has been conferring with authorities at Washington on of late. In fact it is recognized that unless these various matters had merit, a publication such as the Northwestern Miller would not give it the space that it has.

There are any number of bills introduced in each session of Congress affecting the milling business both domestic and export, all of which require watching and frequently considerable work being done on them with various Members of Congress and the committees that are handling same. You can appreciate that some central organization such as the federation must handle these matters.

To sum up, it is an organization that is active, well supported by the milling fraternity and recognized as being the headquarters for all things that pertain to the best interests of the miller.

Reorganization of federation, April 25, 1924.—Prior to this time the president of the federation had been a man prominently and actively engaged in the milling business, and the membership had been composed largely of the members of constituent sectional, State, and city milling associations.

On March 4, 1924, James F. Bell, of Washburn-Crosby Co., wrote to Charles E. Roos, president of the federation, suggesting the qualifications and name of the man that should be the next president of the federation. Mr. Bell wrote in part, as follows:

You will recall at the recent meeting of the millers in Chicago Mr. Loring spoke most pointedly and most forcefully upon the necessity of supporting the federation with sufficient funds to enable it to carry out its work and to secure proper recognition throughout the country.

Do you and the other members of the federation realize how inadequately equipped we have always been, particularly when it comes to legislative matters affecting the industry?

* * * Until we have some one who possesses the knowledge, ability, political contact, entrée and prestige with the different departments with whom we are brought in contact, we never can or never will occupy a position carrying the weight and influence which this great industry must have, to which it is justly entitled.

At a very enthusiastic meeting of millers we had here a week ago, Mr. Loring spoke on this same subject and to real purpose. The millers of the Northwest have organized with the intention of going ahead on a constructive program both as related to their own particular situation and in support of the federation itself.

It so happens that at this time the Hon. Sydney Anderson is about to retire from Congress. This we consider a great blow, both to ourselves locally and to the Nation as a whole. I know this feeling is shared by the members of the administration. However, for financial reasons Mr. Anderson is obliged to disassociate himself in political work.

Here is a rare opportunity, a man who has won a signal place in Congress in 14 years of service. As chairman of the Joint Commission on Agricultural Inquiry his report consisting of four volumes, (1) The Agricultural Crisis and its Causes, (2) Credit, (3) Transportation, and (4) Marketing and Distribution, is one of the finest pieces of work ever turned out since Congress was first inaugurated. He has been president of the Railway Transportation Board and has an intimate knowledge of railroad, agricultural matters, possesses the ear and respect of every Congressman and Senator as well as the department heads.

Here is a real opportunity for the millers of the country to be represented, and I feel most confident if he could be secured he could put the industry in a position of which we would be justly proud. Unfortunately for us, Mr. Anderson has several very attractive offers, and he must make a decision one way or another within a few days. Therefore, if it is going to be handled it must be done in a hurry.

So keenly do we feel the desirability of securing Mr. Anderson that the millers of the Northwest will increase their subscriptions to the federation and are willing to act jointly and in equal amounts with any other group of millers in underwriting the amount, which will be somewhere between twenty and twenty-five thousand. This may seem high to some millers but I think it is a very reasonable figure to pay a man of Mr. Anderson's ability and standing. I think the directors can, without hesitation, undertake this responsibility, knowing that in so far as this section of the country is concerned, we are willing to stand by the increase subscriptions to one-half the total amount if necessary. Please understand we do not think we should pay half the amount, but in order to handle the situation at the moment, we are willing to underwrite that proportion.

Again, I want to repeat this is an opportunity that can not be missed and I hope quick action will be taken that will permit this to go through.

Mr. Roos's reply, if any, is not available, but, on March 15, 1924, Mr. Roos wrote to Mr. Husband outlining the increasing success of the federation since October, 1923, and referring to the approaching meeting of the federation on April 24–25, 1924, in part, as follows:

Your letter 13th. Also have copy of Tip's letter of the 13th to you. Glad to note this evidence of the pep, interest, and hard work displayed by the two of you. Hope you will keep it up for the next two years. I will help whenever I can, but am not hankering for any appointment or office during the next 12 months. What I want is rest and lots of it.

Have just started in where we left off 10 years ago. Attended a meeting of mill owners in Wichita yesterday, about 50 present—a regular old-time get-together meeting. After they got through telling each other how nicely the Kansas City group worked together and what a stimulus the A, B, C plan was to some of them, most of them having cut out the C, I was called upon for some remarks, and took occasion to tell them that the federation officials were continuously on the outlook for means and methods of improving business conditions and that the federation meeting held October 12 was the direct cause of the harmonious action of the Kansas City millers; that it had also stimulated members in other sections of the United States to make an effort to steady the boat; that the meeting of January 10 helped along the work, and that it would be to their interest to attend the gatherings of the federation; that paper and print could not convey the spirit of the work that has been done at these meetings as well as they could absorb it by being present. After the meeting most of the members spoke to me personally and expressed themselves as being ready to attend the next gathering. They are planning now to meet in Kansas City April 22, attend the Southwestern Millers' League convention on the 23d, and be in Chicago the 24th and 25th. We will have a meeting in Abilene within the next two weeks with the northern Kansas millers and I will make an attempt to be with them.

After the reorganization of the federation on April 25, 1924, which made milling companies direct members with the voting power of each directly dependent upon production, A. C. Loring, president of the Pillsbury Flour Mills Co., wrote to Mr. Husband on April 26, 1924, in part, as follows:

I feel quite strongly, and I know the members as a whole do, that we must take up the work of the association much more vigorously than it has been possible to do with the limited resources at hand, and that the work should cover a field that it has not been possible for you, or any of us that are associated with the association, to do. I feel that the man to do this should be one who has the acquaintance of the political situation in Washington fully in hand and the entrée to all of the offices on a personal basis, and who could direct legislation and the actions of the various departments by proper counsel and a keen knowledge of affairs. * * *.

Miscellaneous activities of federation, May–August, 1924.—From the reorganization of the federation on April 25, 1924, to September 1, 1924, there was a lull in federation affairs. The management of the federation during this time fell largely to Mr. Wagner, who had been employed in October, 1923. (See p. 6.)

On May 7, 1924, Ralph Denio, of the J. W. Denio Milling Co., Sheridan, Wyo., wrote to Mr. Husband regarding the reorganization of the federation, in part, as follows:

Let me know what you think about the new line-up. I am not entirely convinced about the wisdom of spending quite so much money in Washington, but perhaps it is O. K. The question in my mind is: Will a professional lobbyist (I assume that is what we are going to have) accomplish as much or have as much influence as the executive heads of institutions who voluntarily go to Washington when it is necessary?

The representative of Modern Miller in Washington was released as representative of the federation as of May 31, 1924, as is shown by a paragraph in a letter of May 27, 1924, from Mr. Husband to Mr. Causey:

As you are aware, our arrangement with you covers periods when Congress is in session and as Congress will doubtless adjourn early in June, I think you had better not look for a continuation of our arrangement after May 31 * * *.

Letters regarding carrying charges were exchanged in July, 1924, as follows:

On July 10, 1924, F. D. Stevens, secretary of the Kansas Millers' Club, Wichita, Kans., wrote to Mr. Husband as follows:

At a meeting of the Wichita group to-day they voted unanimously for one-third cent per day carrying charge instead of 1 cent for every three days. Kindly pass this information to the committee.

On July 12, 1924, E. S. Wagner, acting secretary of the federation, replied to Mr. Stevens as follows:

We are in receipt of your favor of the 10th instant addressed to Mr. Husband advising that at a meeting of the Wichita group they voted unanimously for a carrying charge of one-third cent per barrel instead of 1 cent per barrel every three days. We will pass this information on to Mr. Carl W. Sims, chairman of the federation committee on sales contract, and also bring it to the attention of the executive committee at its next meeting, which will be held July 29.

On the same day, July 12, 1924, Mr. Wagner wrote to Mr. Sims, Sims Milling Co., Frankfort, Ind., regarding Mr. Stevens's information, as follows:

This morning we received a letter from Mr. F. D. Stevens, secretary Kansas Millers' Club, 404 Sedgwick Building, Wichita, Kans., dated July 10, reading as follows:

(See above for copy of Mr. Stevens's letter.)

Have advised Mr. Stevens that we have passed this information on to you and that we will also present it to the executive committee meeting which will be held in this office on July 29.

On July 18, 1924, Mr. Wagner wrote to Mr. Fred J. Lingham, of the Federal Mill & Elevator Co. (Inc.), Lockport, N. Y., in part, as follows, regarding a meeting of Michigan millers:

I attended a meeting of the Michigan State Millers' Association at Grand Rapids yesterday and the day before and two of the most important things that they seemed to have in mind and wherein they believe the federation can be helpful to the industry were restricting bookings to a 60-day period, and getting a fair profit on everything sold. Mills generally will agree with them that these are two very important features of the milling business today. There seemed to be a sentiment that the federation could well stress these two ideas in its efforts to bring about an improvement in the milling business. I pointed out that in our bulletins we had, from time to time, endeavored to impress upon the millers the necessity of getting a profit on all flour sold and that we had been hammering away as to 60 days being the limit for forward sales.

On July 19, 1924, Mr. Wagner wrote to Samuel Plant, of the George P. Plant Milling Co., St. Louis, Mo., in regard to the same meeting of Michigan millers, in part, as follows:

I am sorry I was not here when you called on Wednesday, but as Miss Gifford stated, was attending a meeting of the Michigan State Millers' Association, at Grand Rapids, the 16th and 17th. The impression that I received there was that the federation was one pretty well dominated by the big mills of the Northwest. I disabused their minds as best I could of that thought. * * *.

Mr. Plant replied on July 21, 1924, in part, as follows, especially as to the feeling that northwestern mills dominated the federation:

Your letter of July 19 has my attention. I notice that you secured the same impression during your visit to Michigan as I have gotten from some of the millers in this section to the effect that the federation may be dominated by the Northwest mills, and I feel that to overcome this prejudice it is very necessary for the new president to visit all sections, particularly the Southwest, and indicate to millers who have not joined, the fact that the federation is for all millers and that he proposes to conduct the association in the interest of all.

Mr. Anderson's election to be president of the federation, and a proposal for group meetings, were described by Mr. Wagner in a letter of July 31, 1924, to H. G. Randall, of the Midland Flour Milling Co., Kansas City, Mo., reading in part as follows:

Hon. Sydney Anderson, recently elected president of the federation, will assume his active duties in federation affairs early in August. One of the things Mr. Anderson has in mind is to meet with you as soon as possible and go over matters of interest, at which time it is suggested that you call together as many of your millers as possible for the purpose of an exchange of ideas. Date for such meeting can be arranged later.

In fact, Mr. Anderson took office as president of the federation on September 1, 1924.

On the same day, George Livingston inaugurated the Livingston Economic Service, in Minneapolis, Minn., with a membership consisting of northwestern millers. (See p. 21.)

Regional group meetings, September–November, 1924.—As stated above, Mr. Anderson took office as president of the federation September 1, 1924. In company with Mr. Husband, secretary of the federation, Mr. Anderson undertook a trip throughout the country and held meetings of groups of millers at important milling centers. Mr. Husband took notes at the meetings and prepared summaries therefrom. These summaries were delivered to the commission in April, 1931, and are used herein, together with certain pertinent letters delivered at the same time.

According to Mr. Husband, in his Notes on Meeting of Millers of Kansas City District, at Kansas City, September 4, 1924:

Mr. Hardenbergh offered the resolution that every miller present and the secretaries of millers' organizations indorse the proposition of increased activity of the federation along the lines indicated by Mr. Anderson and that they urge their neighbor millers to join and support the federation. The chairman requested a standing vote on this resolution which was unanimous.

According to Mr. Husband:

Mr. Randall pointed out the great advantage to millers in the package differential schedules published by the federation and urged millers to maintain this schedule for their own protection. * * *.

According to Mr. Husband:

Karl Humphrey stated "that it was very necessary that every effort possible be made to keep millers in their present mood to get prices showing a reasonable profit and to maintain morale in the industry."

The executive committee of the federation also had a meeting in Kansas City early in September, and the action of this committee was described in part in a letter of September 9, 1924, from Mr. Husband to Charles T. Olson, chairman committee on package differentials of the federation:

Answering your inquiry, please be advised that Mr. Bell was present at the meeting of the executive committee in Kansas City last week and agreed to the changes in carrying charges. I do not desire to misquote him, but it was my understanding that he had discussed the subject at a recent meeting of millers in the Northwest and that there was a sentiment among those millers that they would adopt the revised basis.

According to Mr. Husband's notes on the group meeting at Buffalo, N. Y., held September 15, 1924, several methods of competition were discussed, as follows:

Mr. Lingham spoke at some length as to his experience in asking millers as to what they were doing, and in answer to a question, Mr. Anderson stated that in

his judgment there could be no objection to giving information as to what had been done, but where information was given regarding prices for future shipments there was always a danger of slipping over the safety line.

There followed a general discussion of carrying charges and it was indicated that these are being quite generally observed.

The secretary explained that the federation package differentials were arrived at by a very careful analysis of all the factors involved and urged that the general observance of the federation package differential schedule be maintained.

Mr. Husband's notes on the group meeting at Lansing, Mich., held September 16, 1924, describe in part the following questions that were discussed:

Mr. King referring to the federation meeting in October of last year as the beginning of a new era for the milling business and stated that the result of that and similar meetings held since that time had been an improvement in milling conditions. In conclusion, he urged that every miller present join the federation and cooperate in federation work.

* * * * * * *

Mr. Edwards spoke of the advantages that would come from a central agency for reporting information of interest to millers and stated that in his judgment the group meetings were very helpful. In reply to Mr. Edwards, Mr. Anderson outlined briefly plans being worked out in the Northwest to collect and distribute data of interest to millers and stated that he was in touch with this situation.

* * * * * * *

Before adjourning, Mr. King suggested that those millers who approved of the federation program and were willing to support it, arise, and the action was unanimous.

While these group meetings, which lasted till late in November, were being held, letters of interest and importance passed between officers of the federation and millers located in various parts of the country touching on the same matters, so it seems advisable to carry the story along, both by means of notes on the meetings and the correspondence referred to above.

Referring to low prices of northwestern millers, A. R. Kinney, Grand Island, Nebr., wrote to Mr. Husband on September 16, 1924, as follows:

Our Milwaukee manager advises us that some of the northwestern millers are demoralizing conditions very badly.

He speaks especially of the Duluth Imperial Mills who he says are offering their best Baker's Patent at $6.20 Racine.

We are also advised that the Atkinson Milling Co. is making some scandalously low prices. In general, these ridiculously low prices are practically all coming from the Northwest and not from the Southwest as has been the usual custom this time of year.

Is there anything that you can suggest that might help relieve the situation?

Mr. Husband replied, on September 19, 1924, suggesting a method to use when price cutting is reported:

I have your favor of 16th instant, and while not yet thoroughly organized to take up the matters to which you call our attention, I am to-day taking them up at a source that I hope will prevent a repetition. May I suggest a method which Mr. Anderson has been outlining to millers at the numerous meetings that we have attended, and that is that in such cases, the miller communicate direct with the miller who is reported to be offending and in that way gradually improve the situation. We have had numerous cases called to our attention where the reports were either altogether untrue or that the quotations were on a grade of flour entirely different from that reported.

On October 15, 1924, Mr. Causey again took up with Mr. Husband, the matter of reemployment during the new session of Congress, writing, in part, as follows:

Just a line to remind you that I will again be on the job for the federation beginning with the opening of Congress if my services are desired. I thought

I would drop you a line at this time to remind you that I am still in Washington and would like to again represent the federation here on the same basis as existed last season.

See page 9 for the terms and position of Mr. Causey at the previous session of Congress.

Mr. Husband replied as follows on October 17, 1924:

It was pleasant to receive a letter from you again, and if there is any need for our employing a representative I most certainly will keep you in mind.

I doubt, however, whether that will be necessary in view of the fact that Hon. Sydney Anderson is now our president and will be located at Washington, at least until Congress adjourns on March 4.

The subject of low conversion cost, as resulting in low prices was taken up in a letter of October 17, 1924, from E. N. Fairchild, of the Fairchild Milling Co., Cleveland, Ohio, to Mr. Husband, in part, as follows:

In this case, the price they suggest would give us about 20 cents per barrel for converting the wheat into flour, or what some mills refer to as a conversion cost, and the lowest conversion cost, that we understand, some mills are applying on the business done with some of the large bakers is 50 cents per barrel, and I want to suggest to you that this conversion cost is something that you should look into, for I believe it is just about as injurious as overproduction.

Mr. Husband replied on October 18, 1924, suggesting that the names of mills selling at low prices should be sent.

I thank you for your letter of 17th instant and we desire that there be sent to us information of this kind which is reliable. I wish, however, that your correspondent had indicated definitely the mills that were offering flour at the prices indicated. In some instances, where we had definite information of this kind, Mr. Anderson has not hesitated to go to the principals of these concerns with a view of preventing their repetition. I propose to bring your letter to his attention, and in the meantime if you get anything more definite as to who the guilty parties are I trust you will give us the information.

Mr. Anderson also replied to Mr. Fairchild's letter of October 17, 1924, in a letter dated October 22, 1924, as follows:

Mr. Husband has called my attention to your letter of October 17 relative to offers being made in New York of regular brands of flour for domestic use at prices apparently below the cost of production.

We are anxious to have a chance of checking up on the people who are making destructive prices but it is utterly impossible to do anything in this direction without specific information as to the mills making the offers and times, places and conditions under which they are made. It is not always possible to stop these practices and an investigation frequently shows that the offers have not been made as indicated, and it very frequently happens that the offers when made, involved so small an amount of flour that they really should not have any effect upon the general price level. Of course, the whole matter is one of rather delicate character, but wherever we can be advised with sufficient definiteness that would make action on our part possible, I am always glad to do what I can to run down the cases and to urge that the practice be discontinued. There will, I am afraid, always be prices quoted below general price levels, and it will never be wholly possible to prevent this practice.

We want to do what we can both in preventing the practices and in establishing a clear understanding of what a really small proportion of the total business is represented by sales of this kind. Indeed, I think if this was fully understood by millers they would be less affected by reports such as the one indicated.

In regard to group meetings in Oklahoma and Kansas, Ralph C. Sowden wrote to Mr. Husband, on October 20, 1924, in part, as follows:

Last Saturday I attended a meeting of the Oklahoma millers held at Mr. Sohlberg's office in Oklahoma City. There were some 15 mills represented there

and it was good to see the interest and determination which was manifested by all who attended.

I was especially pleased to note the friendly feeling toward the federation and in my talk with Mr. Thatcher, of the Oklahoma City Mill & Elevator Co., he told me that he was very favorably impressed with the activities of the federation and that he was seriously considering becoming a member. Mr. Sohlberg intends to join.

In talking with Mr. Ford, of the Shawnee Milling Co., I gathered the impression that some of the mills of 500 barrels capacity and under feel that they were not wanted by the federation. I tried to dispel this idea from his mind and hope that you and Mr. Anderson will bring out this point forcibly at our meeting at Wichita.

There never was a time when the interest in our national organization appeared as strong as it does at present and we are all bending our efforts to make the attendance at the Wichita meeting 100 per cent. We are impressing all with the fact that this is a millers' meeting for millers and that Mr. Anderson will be the only speaker and after his address there will immediately follow a full and frank discussion of the questions vital to the milling industry. I feel safe in saying to you that this is going to be one red-hot meeting.

The group meeting at Wichita referred to above by Mr. Sowden was held at Wichita, Kans., on October 24, 1924. In his notes on this meeting Mr. Husband reported in part, as follows:

Mr. William Kelly stated that there was considerable improvement as a result of millers having a better understanding of each other's problems and that the younger men in the industry need the guidance and advice of those of longer experience, and that the industry needs a proper, sane, workable code of business ethics, and that mills in the Southwest are now in a mental attitude to accept such a code.

* * * * * * *

Mr. J. F. Ford emphasized the idea that it was a mistake for mills to expect to run full time, that there should be a change of policy now. He stated group meetings were helpful and that output should be limited so as to prevent the necessity for resales for flour, maintaining a conservative attitude and endeavor to get business back to a basis where reasonable profits are assured.

In his notes on the group meeting held at Denver, Colo., October 28, 1924, Mr. Husband reported, in part:

Mr. J. K. Mullen stated that in his opinion the high cost of selling flour favored direct sales with no long-time bookings, with a policy of paying commissions when same are earned; that the federation uniform sales contract should be universally adopted. He stated this was the first meeting he had attended in 25 years, and that the sentiment now is for millers to get together and work together from now on.

Mr. Husband reported the adoption of the following resolution, in his notes on the group meeting held at Ogden, Utah, October 30, 1924:

Chairman Blood then asked what those in attendance intended to do about the situation advocating group meetings at frequent intervals, at least once a month, and urged those present to join the federation, whereupon Mr. J. M. Parker moved that the plans of the federation as outlined, be indorsed and that the members of the Utah-Idaho Millers' Association be urged to file their applications for membership in the Millers' National Federation, which motion was duly seconded and carried; whereupon the meeting adjourned.

James F. Bell, in a letter of November 5, 1924, to Mr. Husband suggested that the federation get out a bulletin on carrying charges, writing as follows:

Would suggest the federation get out a bulletin on carrying charges, emphasizing the fact that mills generally are adhering to this but that a few exceptions are creeping in, and if continued, these will break down the whole structure.

Mr. Wagner replied on November 6, 1924, stating that the federation would put out such a bulletin. He wrote as follows:

We have your favor of 5th instant suggesting that the federation get out a bulletin on carrying charges emphasizing the fact that mills are generally adhering to the policy of exacting a carrying charge, but that there are some exceptions to the rule. We are acting on your suggestion and will put out a bulletin tomorrow on the subject with the idea of emphasizing strongly the necessity for mills adding a carrying charge on all bookings beyond 60-day delivery period, and trust it will be effective in what we are endeavoring to bring about.

Mr. Husband's notes on the group meeting held at Portland, Oreg., on November 7, 1924, read, in part, as follows:

Mr. Burke in answer to one of Mr. Husband's remarks explained that the North Pacific Millers' Association desired to keep apace with any changes in the uniform sales contract and asked how far millers can go in association activities. President Anderson answered by stating that first the law frowns on information giving current or future prices; second, that any division or alignment of territory is objectionable; third, that limiting production would also be opposed; that the Federal Trade Commission frowns on uniform cost but not on uniform cost methods and indicated how far information can be used.

A description of the more important discussions at the group meeting held at Minneapolis, Minn., on November 19, 1924, is given in Mr. Husband's notes:

Mr. G. N. Palmer, regional director, presided, and after address by President Anderson, followed by remarks by Secretary Husband, the meeting was thrown open for a general discussion.

Mr. James F. Bell stated that President Anderson was a force for good to the industry and that lack of coordination had been responsible for the public's attitude; that the industry is now entering a new era under President Anderson's leadership.

Mr. Loring stated that time is necessary to correct conditions, calling attention to the fact that present conditions in the industry are unusual; that there was a variation in the price of grain and its products with difference in spread of price on flour grades that has had a bearing on the general situation; that false reports produce demoralization, breaking down the morale; that patience, confidence, and frequent meetings of millers will be helpful; that representatives of mills have been working for the buyer rather than for the mill; that mills must hold their men in check; that terms and conditions of sales must be published and maintained; that the broad problems in the industry must be controlled by a central organization; that false reports have been general and that rules for conducting business must be drafted as an incentive to improve conditions.

* * * * * * *

Mr. Sheffield stated that a new era in the industry began when Messrs. Bell and Loring began to attend millers' meetings, this improvement being noticeable in the handling of forward sales and credits and that better ethics are being maintained.

The remarks of Hugo Roos and of Mr. Kinney, at the group meeting at Omaha, Nebr., on November 21, 1924, are given as follows by Mr. Husband in his notes:

Mr. Hugo Roos in reviewing from his viewpoint the attitude of millers in other sections stated that group meetings of millers had been traceable to federation meeting of October, 1923, and that millers are now cooperating by conferring with each other by telephone, thus indicating confidence in each other. He stressed the necessity of small millers becoming members of the federation.

Mr. Kinney called attention to the change of attitude of the Washburn-Crosby Co. as announced by Mr. Bell.

At the end of the group meetings of millers, plans were made to draw up a code of ethics covering competition.

In this regard, Mr. Anderson wrote to Mr. Lingham on November 24, 1924, in part, as follows:

We are planning to work out a code of ethics and establish a constructive method, the object of which will be to maintain substantial equality of competition as between mills and as between sections * * *.

Referring to the same matter, Mr. Husband wrote to the J. C. Lysle Milling Co., Leavenworth, Kans., on November 26, 1924, as follows:

Please be advised that the selling abuses to which you refer and others are now under consideration in a list of business practices that should be outlawed by the milling business. I think you will appreciate that we would be assuming considerable authority if we undertook to issue a list of bad practices without having some official sanction to do so. However, as indicated above, the matter is under consideration and I think you will hear something of it in the near future.

Twelve practices to be outlawed, December, 1924–January, 1925.—As a result of the group meetings of millers (see p. 13) a list of practices to be outlawed was drawn up and sent to 75 leading millers, many of whom wrote back comments and suggestions on one or more of the practices listed.

In sending the list to Mr. Anderson on December 5, 1924, Mr. Husband wrote in part, as follows:

Referring to our understanding regarding the "List of undesirable practices," I am inclosing herewith a form of letter and a list of 12 of these practices with a list of about 75 millers to whom it was my thought to submit this and get their views.

I regard this as quite important, and will appreciate it if you will read it carefully and criticize it frankly, making such changes or additions as your judgment suggests.

The letter referred to in the above-quoted letter was sent out to about 75 millers on December 16, 1924, and was as follows:

Since September 4 President Anderson and the writer have met with 27 groups of millers. At each of these meetings, following an address by President Anderson, there was a general discussion of milling conditions in response to requests by Mr. Anderson that millers indicate the most important activities that the federation could take up looking to a general improvement in milling conditions.

Without exception a higher standard of business ethics and "outlawing" of uncommercial practices in the industry were emphasized as the most important factors in bringing about needed reforms in the industry; it was pointed out many times that indulgence in uncommercial practices was responsible for the lack of confidence in each other that seems to be a characteristic of millers everywhere we visited.

Memoranda were made of each of the practices which millers desired eliminated, and if agreement can be reached by any considerable number of units throughout the country that these practices should be "outlawed," they will be published by the federation as undesirable, uncommercial, or unethical practices, and millers will be urged to eliminate them from the milling business.

The federation should, and does, stand for the highest type of business ethics, and your officers are extremely anxious that this list be published at as early a date as possible. Please look over the attached copy and give us your views; if there are other practices that should be "outlawed," please indicate these in your reply. Please confer with other millers in your territory and let your reply reflect their views as well as your own.

This letter and the attached list is being mailed to 75 representative millers throughout the United States. It should be distinctly understood that the practices listed herewith, and our proposal regarding them, do not represent a final or arbitrary conclusion on our part; they are submitted as something "to shoot at," and we hope our replies will indicate a crystallization of opinion on the part of those addressed as to all or some of the practices referred to. Please consider them accordingly. It is understood, of course, that neither this letter nor attached list is to be published at this time.

The list referred to in the above letter is as follows:

MILLERS' NATIONAL FEDERATION

PROPOSED UNCOMMERCIAL AND UNETHICAL PRACTICES THAT SHOULD BE "OUTLAWED" BY FLOUR MILLERS

1. Sales of flour for shipment beyond 60 days from date of order.
2. Guaranteeing flour prices against decline.
3. Consigning flour under any conditions.
4. Selling flour on open account, or on "acceptance" basis (the latter practice is a subterfuge for selling on open account).
5. Selling flour on the basis of bids rather than naming price at home office and maintaining it.
6. Permitting salesmen or brokers to make sales at former prices, after an advance.
7. Failure to observe strictly the federation package differentials.
8. Failure to collect carrying charges.
9. Offering so-called premiums as an inducement to buyers.
10. The practice of offering flour at reduced prices in a specified territory on a given day; this practice is commonly known as bargain-day sales.
11. Recognition of "gossip" relayed to the mill by salesmen, brokers, etc., as to what other mills are doing, and meeting prices and terms so reported without confirming them from the mill accused.
12. The practice of salesmen or brokers carrying "vest-pocket orders"; either those to be entered upon notification of advance in price, or those representing the buyer's basis of price, to be entered when market declines will permit.

In reply to the above letter and list, Robert R. Clark, of the Aunt Jemima Mills Co., St. Joseph, Mo., wrote to Mr. Husband on December 18, 1924, in part, as follows:

I am decidedly in favor of the code of ethics mentioned in your letter. In fact, we have already had this up in our Kansas City meetings and are going forward with it in a very aggressive way.

On December 18, 1924, Harry G. Randall, vice president of the Midland Flour Milling Co., Kansas City, Mo., wrote to Mr. Husband as follows:

We have your letter on the subject of a code of ethics for the milling business and are very much interested.

The millers of Kansas City have arranged to hold a special evening meeting on December 30 for the purpose of framing a tentative code. Also, arrangements are partially completed for a joint meeting of southwestern millers with about 8 or 10 of the prominent millers from the Northwest in Kansas City on about January 6, at which time the question of a code of ethics will be a prominent subject for discussion.

These two meetings were determined upon before we received your letter.

On December 18, 1924, John A. Sim, general manager of the Hicker-Jones-Jewell Milling Co., New York, N. Y., wrote to Mr. Husband, in part, as follows, regarding practices to be outlawed:

Along broad lines there would be a distinct gain for the industries in the elimination of any one of the practices listed, and if in the course of a reasonable length of time all these practices can be eliminated, the dawn of a brighter day in the milling industry would be sure.

In a letter of December 19, 1924, Thad L. Hoffman, of the Kansas Flour Mills Co., Kansas City, Mo., gave the following opinion regarding item No. 7 of the list.

No. 7. Failure to observe the federation package differentials is only another method of cutting prices and certainly should be discontinued.

On December 22, 1924, Mr. Clark, of the Aunt Jemima Mills Co., wrote to Mr. Husband referring to "the code of ethics," and who should claim credit for it, in part, as follows:

Unless we can capitalize the sentiment that has been created as a result of the October meeting and other meetings, the movement is very apt to fall back into the discard again.

Already I see indications here in the southwest where one of the leading millers—the Kansas flour mills—is getting irritated and showing an unwillingness to play ball if some one else umpires the game. There are others.

To keep up the interest and keep the movement going, in my judgment, is the work of the Millers' National Federation office, keeping the mills pretty well informed as to what is going on and the results you are getting.

Furthermore, if the credit belongs to the Millers' National Federation, they should claim it. The first I heard of the code of ethics came out of the Northwest, from the bureau up there.

A. R. Kinney, of the Nebraska Consolidated Mills Co., Omaha, Nebr., in a letter of December 22, 1924, described the action taken on the list by a group of millers meeting at Omaha, as follows:

I read your list of suggested outlaw rules to our group meeting last Thursday evening. All present were for the rules, with some reservations on one or two of them.

Some of them question the advisability of a strict 60-day rule, or if the 60-day rule were made effective they might want to make some special exceptions on occasion.

No. 4, where the mill sells direct to the retailer, as most mills do in Nebraska and Kansas, it is the custom to sell on about the same terms jobbers make to retailers in other sections. We could all agree to the advisability of selling jobbers and bakers on a strictly cash basis.

No exceptions were suggested to the other principles.

The International Milling Co., Minneapolis, Minn., in a letter dated December 22, 1924, commented upon bargain-day sales, as follows:

10. We do not see any difference between bargain-day sales and any other method of making cut prices.

The Wasco Warehouse Milling Co., The Dalles, Oreg., in a letter dated December 24, 1924, commented upon premiums, as follows:

9. Offering the premium on the purchase of flour is no less than cutting prices, and a firm doing such is using unfair methods.

The Allen & Wheeler Co., Troy, Ohio, on December 26, 1924, wrote to Dewey Brothers Co., Blanchester, Ohio, in part, as follows:

* * * If you may profit because of the differentials in some few respects, should you not rightly do so? It is one of the basic commercial principles admitted by the Federal Trade Commission that we may establish rules for the governance of our businesses and it is the adherence of all of us to these rules that make them strong and worth while. I believe you will find most of us adhering to the differentials and with scarcely any discussion about them in any respect.

While the matter of a code of ethics was thus being discussed, a competitive situation arose in Minneapolis, Minn., which led Mr. Husband to write to Mr. Anderson, in part, as follows, on December 29, 1924:

I am most disturbed at some of the things which George Livingston told me to-day and which he said I should relay to you in a confidential way. He told me that the situation as between Washburn-Crosby Co. and Pillsbury Flour Mills Co. has developed to a point where he (Livingston) expects almost any day to see started what he terms as a "knock down and drag out" price war. Mr. Livingston stated that he did not feel like being in the position of an alarmist, but he thought the situation was such that you should know it, and suggested that probably if you could arrange to go to Minneapolis and be there before Bell leaves on next Sunday, arranging a conference between Bell, Loring, and yourself trouble might be averted.

Meantime, the uncertainty regarding the work to be done by the federation and by the Livingston Bureau led Mr. Anderson to write to Mr. Livingston about this matter on December 29, 1924, the same day that Mr. Husband had written to Mr. Anderson about Mr. Livingston's report on conditions in Minneapolis. Mr. Anderson's letter to Mr. Livingston, in part, follows:

The division or coordination of the work which you are doing with the work of the Federation has, as you know, given me a good deal of concern. I have not been able to work out either a coordination or a separation of this work which is entirely satisfactory, and I have felt that before reaching a conclusion in the matter, I ought to have an opportunity to talk with Mr. Bell about it, inasmuch as he was largely instrumental in getting me into the federation as well as initiating the work which you are doing in the Northwest, and it may be that he had some idea as to the division of the work which ought to exist in his own mind at the time the federation was reorganized and your work was started.

Returning now to the comments on the practices to be outlawed, letters continued to come into the federation on this subject throughout most of January, 1925.

On January 3, 1925, Fred J. Lingham, Federal Mill & Elevator Co. (Inc.), Lockport, N. Y., wrote to Mr. Husband regarding item No. 1, as follows:

1. Sales of flour for shipment beyond 60 days from date of order: I would not favor such a restriction. I believe that buyer and seller have the right to contract as they may desire. On the other hand, I believe that millers should be educated to the fact that they can and should figure definite carrying charges on any sales made for shipment beyond 60 days * * *.

A discussion of the list as a whole is contained in a letter from Philip H. Postel, of the Ph. H. Postel Milling Co., Mascoutah, Ill., dated January 5, 1925:

I have given the list a great deal of thought the last few days and have also talked to some of my miller friends about this matter and without exception they agree that you have covered the subject thoroughly and that the practices you mention should be outlawed without doubt by all flour millers if our industry is to maintain the standing it rightfully deserves.

I have had the dozen unbusinesslike methods that you mention in your list brought to my attention by our southern broker, and if you and Mr. Anderson can get the members of our federation to discontinue these uncommercial and unethical practices, I am satisfied that the milling industry will not only be more profitable but also much easier and more pleasant for the executives.

I realize that this is a big job, especially so since some mill managers will do almost anything to make a showing (without the knowledge of their higher executives) for the president and stockholders, but this condition is certainly worth working for and you have my whole-hearted support and full cooperation.

Turning aside for a moment, information about the federation uniform sales contract is given in the following letter of January 7, 1925, from Mr. Husband to Dundas Brothers Co. (Inc.), Philadelphia:

Owing to the difficulty of filling orders on time we discontinued this practice several years ago and suggest that the Burns Publishing Co., of Olathe, Kans., are in position to furnish you the federation uniform sales contract blanks, with or without your name inserted.

In this connection please suggest to Burns Publishing Co. that the contract furnished you should bear the revised carrying charges.

Summing up the position of the millers that had written in regarding the list of practices to be outlawed, Mr. Husband wrote to J. K. Mullen, president of the Colorado Milling & Elevator Co., on January 10, 1925, in part, as follows:

Unfortunately some of the mills continue to indulge in practices that have a demoralizing effect. It is in an effort to break up these practices that we recently submitted to you, and about 75 other millers throughout the United States, a list of proposed practices that should be outlawed. Our replies from these millers encouraged us to feel that the leading millers of the country favor the elimination from the milling business of the practices so listed. * * *.

The list of practices sent to other millers on December 16, 1924, appears to have been sent to A. C. Loring, president of Pillsbury Flour Mills Co., Minneapolis, Minn., under date of January 15, 1925, and Mr. Loring replied on January 16, 1925, referring to a meeting at Minneapolis, Minn., on the code of ethics.

Your circular letter of January 15, addressed to me, regarding the undesirable practices in the milling business, is received, and in reply would say that you are undoubtedly aware the millers here, with Mr. Anderson, are trying to work out a basis that will be satisfactory to them all; and if they can come to a mutual agreement as to these matters, it will go a long ways toward settling the problems that the millers have to contend with. It, therefore, did not seem necessary for me to answer the letter, as Mr. Anderson will have this information to present to the committee, when they meet, voicing the views of the northwestern millers.

On January 20, 1925, Hyrum Bennion, jr., of Hyrum Bennion & Sons Co., Murray, Utah, wrote a letter describing the approval of the list by the local association, reading in part, as follows:

Since writing the letter on December 24 I have had before our local association your letter and list of practices and they O. K. every one of them. On No. 4, however, there was a local condition which hinders at present its adoption; that is, all the flour business in this intermountain section is done directly with the retail stores and bakers by the mills and on open accounts.

* * * * * * *

On No. 7 we have agreed among ourselves to limit contract periods to 60 days and collect carrying charges beyond that period. On outside trade can fully concur and immediately conform to.

In a letter of January 21, 1925, Mr. Lingham described the results of a discussion of a group of millers in Buffalo, N. Y., on the list, the letter reading in part, as follows:

Referring to yours of December 16, we discussed several of the points raised at a luncheon of 11 millers in Buffalo yesterday, and I believe it safe to say that the consensus of opinion was as per my recent letter to you covering the several points.

On January 22, 1925, Clarence L. Chase, sales manager of the H. D. Lee Flour Mills Co., Salina, Kans., wrote concerning a meeting at Kansas City to discuss the code of ethics, the letter reading in part, as follows:

At about the time we expected to write you quite fully the announcement came of the meeting at Kansas City to discuss the proposed code of ethics for millers. It seems, therefore, unnecessary to answer your letter until at least after the Kansas City meeting.

Most of these points were discussed at Kansas City and President Anderson was there to get the information as those attending expressed themselves. The questions asked covered the subject sufficiently thorough that what I might add here would be ancient history.

The effects of federation efforts were described in two letters which Robert R. Clark, St. Joseph, Mo., wrote to two different millers on January 22, 1925.

To H. K. Schafer, Maney Milling Co., Mr. Clark wrote, in part, as follows:

I agree with you that changing conditions had a lot to do with the profitableness of the milling year, but we got the right start from the federation meeting which was the organization that got the Northwest, Southwest, and Central States together, and it is the only organization in existence to-day that can do that.

To Chauncey Abbott, jr., Omaha Flour Mills Co., Mr. Clark wrote, in part, as follows:

* * * I feel that we must give credit to Mr. Bell for having made it possible for us to make money during the past crop year, as he took the lead and went on record and has carried out what he said he would do.

Code of ethics adopted at annual meeting of federation, April 16, 1925.—This code had been in preparation since September 1, 1924, both through group meetings and correspondence, as already described.

The following code of ethics and business practices was adopted by the Millers' National Federation at the annual meeting, Chicago, Ill., April 16, 1925:

Resolved, That in compliance with the program of the United States Department of Commerce for the elimination of waste in distribution and for adoption of simplified business practices and uniformity of method and forms; to promote equality of competition and facility in interpreting such competition; to eliminate unsound, unbusinesslike, and unethical practices; and to promote the highest standard of business ethics and conduct, the Millers' National Federation has adopted and urges the adherence of its members to the following:

CODE OF ETHICS AND BUSINESS PRACTICES

"1. We will strive to maintain the highest excellence in quality, merchandising service, and business practice in order that we may have respect for our products and that others may respect them. We will deal honorably with our competitors, our customers, and the public and we will refrain from any action, method, or practice which if indulged in by a competitor we would regard as unethical, unsound, or unbusinesslike.

"2. Sales of flour should be made for delivery within not to exceed 60 days.

"3. Price of flour or other mill product shall not be guaranteed against decline.

"4. Flour and other mill products shall not be consigned. (Consignment means delivery by shipper to customer, agent, or broker for sale at a future time at an undetermined price.)

"5. All carload sales should be made on sight draft or arrival draft terms.

"6. All sales shall be subject to confirmation at the home office or duly authorized branch office of the mill.

"7. Millers' National Federation package differentials shall be strictly observed.

"8. Charges shall be assessed and collected from the buyer in all cases where shipping directions are not received within contract time, at the rate of one-third cent per barrel per day for flour and 1 cent per ton per day for feed.

"9. Millers' National Federation uniform sales contract should be used in all cases.

"10. Millers shall not give rebates, premiums, donations, or subsidies in the merchandising of their products.

"11. There shall be no so-called bargain day sales.

"12. It is recommended that mills issue a fair list price and adhere strictly to it. Revision should be made only when there has been sufficient change in costs of production to justify it.

"13. After prices have been advanced, no sale shall be accepted at previous prices.

"14. It is recommended that sales prices reflect cost plus a profit, based on the cost of replacement of raw material and a cost of operation and sales reflecting the normal average capacity actually operated by the industry, not exceeding 55 per cent.

"15. It is recommended that reports of unethical and uncommercial practices of competitors be accepted with the utmost caution, and that no action be predicated thereon unless and until the authenticity of such reports is confirmed by inquiry from the competitor or competitors involved.

"The interpretation and adherence to this code by millers is within the conscience and good faith of each miller, but the federation urges that the essence and value of the code lies in voluntary and universal adoption of and adherence to its principles at all times, and under all circumstances."

See Preliminary Report of the Federal Trade Commission on Competitive Conditions in Flour Milling, 1926 (p. 81).

Standard cost card of federation adopted November 19, 1925.—The matter of costs became important after the reorganization of April 25, 1924, and especially after the adoption of the code of ethics on April 16, 1925. Accountants were employed by the federation to draw up a uniform accounting system, which was adopted by the federation on November 19, 1925, under the title "Uniform cost and accounting system for Millers' National Federation."

Part of this system, under the heading "Standard cost card" was as follows:

Following what has been presented as the basis of figuring costs, the simplest formula for figuring costs and selling prices might be something as follows:

Wheat at replacement value for kinds and grades of wheat required at standard yield, including premiums and freight on wheat.

Deductions for offal at market or anticipated price, whichever is lower, less $2 a ton.

Operation at standard cost per barrel on basis of 60 per cent operation for conversion, administration, and selling, omitting branch office and other special selling costs.

Cost of barrel of straight 100 per cent flour f. o. b. mill.

Deductions for clears at market or anticipated selling price, whichever is lower, less 40 cents a barrel.

Adjust to cost of full barrel 196 pounds patent flour.

Add to above cost the cost of two 98-pound sacks, including freight, on basis of purchase in 1,000 lots.

Add freight to destination.

Total, ———.

Also add other special charges for additional sales effort such as salesmen brokers, and the like.

Also add branch-office selling if sales are through branch offices.

Total, ———.

The total will be to-day's standard cost for the grade figured, first, if sold by home office; second, if additional sales effort has been used; third, if sold through branches.[1]

It appears that this is more than a mere system of accounts, as it suggests actual figures to be used as additions or credits to costs, whereas an accounting system shows merely the names and definitions of the items.

It will also be noted that the costs described above are called "standard costs" and not actual costs.

Injunction case of Federation against the Commission in Courts, April, 1926–April, 1931.—This case, which lasted five years, is best described by an excerpt from the commission's Annual Report for 1931, as follows:

Millers' National Federation.—On February 16, 1924, the United States Senate, by resolution, directed the commission to investigate and report to the Senate, among other things, the extent and methods of price fixing, price maintenance, and price discrimination in the flour and bread industries, developments in the direction of monopoly and concentration of control, and all evidence indicating the existence of agreements, conspiracies, or combinations in these industries.

In the course of the investigation the commission made inquiry with respect to the activities of the Millers' National Federation, a voluntary, unincorporated association, whose members produced approximately 65 per cent of the flour milled in the United States, as well as the activities of other milling associations and corporations engaged in the milling industry. Permission was requested of the Millers' National Federation to inspect certain papers, documents, and correspondence files, which permission was in part granted.

As a result of the inspection of certain correspondence the commission requested the federation to supply it with copies of certain designated letters and further requested access, for the purpose of inspection, to minutes of meetings among

[1] Court of Appeals, District of Columbia, April term, 1930, Federal Trade Commission v. Millers' National Federation, Transcript of Record, pp. 109, 110.

members of the federation and other millers in various parts of the country and to letters passing between the federation and its members leading up to the adoption of a so-called code of ethics by the federation. The request was denied.

The commission thereafter called a hearing in the investigation to be held in Chicago, and served subpœnas upon the secretary of the federation requiring him to produce at the hearing certain letters specified by dates, names of the parties correspondent, and subject matter, which its representative had been permitted to inspect in the federation's offices. Subpœnas were also served upon the secretary requiring the production of minutes of the meetings among members of the federation and other millers above mentioned (inspection of which had been denied) and of the letters relating to the adoption of the code of ethics.

The Washburn-Crosby Co., a member of the federation and the largest milling corporation in the United States, having also refused to permit the commission to inspect certain letters specified by dates, names of parties correspondent, and subject matter, as well as having declined to permit a statement of its business, made up from its books by representatives of the commission, to be taken from its offices, subpœnas duces tecum were served upon officers of the corporation, requiring the production of the letters and of the statement, at a hearing to be held in Minneapolis.

On the day prior to the hearing which was to have been held in Chicago the Millers' National Federation, on behalf of its members, filed a petition in the Supreme Court of the District of Columbia praying for a temporary restraining order and a temporary injunction restraining the commission from taking any steps or instituting any proceedings to enforce the subpoenas or requiring the plaintiffs, or any of them, to produce the documents or letters required thereby. On the day of hearing set at Chicago the secretary of the federation, the officers of the Washburn-Crosby Co., and certain individuals connected with the federation, through membership therein of corporations in which they were officers, did not appear as required by subpoenas ad testificandum, and on the morning of the same day a temporary restraining order was issued by the Supreme Court of the District of Columbia as prayed for in the petition. A motion for temporary injunction was subsequently made.

The commission answered the motion on the merits and moved to dismiss the petition on various grounds, among others, that the court was without jurisdiction to restrain the commission from proceeding with the hearing. Both motions were argued, and on September 22, 1926, the court rendered its decision granting the temporary injunction. (Decision not reported.) From this an appeal was taken on December 10, 1926, to the Court of Appeals of the District of Columbia. Before hearing on this appeal was had, the commission, March 30, 1927, petitioned the Supreme Court of the United States for certiorari, which was denied April 25, 1927 (274 U. S. 743), thus leaving the case to be heard on the appeal in the Court of Appeals of the District of Columbia.

After briefs and arguments, the court of appeals, December 5, 1927, affirmed the decree of the Supreme Court of the District (23 F. (2d) 968), and remanded the case for further proceedings. The court held that the opinion of the Supreme Court of the United States in the Claire Furnace Co. case was not controlling, that the present case must be determined upon principles not obtaining in that case, and that injunction would lie to restrain the commission, should the court find, on a final determination of the case on its merits, that the commission had exceeded its jurisdiction. In short, its holding was that the Supreme Court of the District had jurisdiction to determine the matter.

The commission, December 12, 1927, filed a petition for rehearing, on the ground that the court had failed to decide the point of law which was the principal basis for the judgment below, and practically the sole ground assigned in the petition for special appeal on which the case was heard in the court of appeals, the court below holding that sections 6 and 9 of the Federal Trade Commission act did not confer any jurisdiction upon the commission to employ subpœnas in any investigation made under section 6 of the act, but that the statute conferred power upon the commission to employ subpœnas only in adversary proceedings conducted under authority of section 5. The petition for rehearing was denied January 21, 1928.

The commission filed answer to the amended bill of complaint February 14, 1928, On March 23, 1928, the court granted the motion of the federation for leave to file supplemental bill of complaint, in which it was claimed that final decree should issue against the commission, on the ground that its investigation had been completed, final report made to the Senate, and its authority thereby exhausted. The commission's answer to this supplemental bill was filed on April

4, 1928. Subsequent negotiations resulted in the adoption of an agreed statement of the facts, in lieu of taking testimony, in the suit for permanent injunction, in the Supreme Court of the District of Columbia. This stipulation, signed by counsel, agreed that all of the letters and documents included in the subpœnas issued by the commission and directed to the secretary of the Millers' National Federation "are pertinent, relevant, and material to some one or more of the subjects of inquiry embraced within that part of Senate Resolution No. 163 which reads as follows: 'The extent and methods of price fixing, price maintenance, and price discrimination; the developments in the directions of monopoly and concentration of control in the milling and baking industries, and all evidence indicating the existence of agreements, conspiracies, or combinations in restraint of trade' ", and that "none of said documents are private or confidential in the sense that they would be privileged from production as evidence if lawfully required in a trial before a court."

The case was argued on the merits January 15, 1930, and the court, May 26, 1930, decided the case adversely to the commission. No opinion was filed, and no reason given for the action of the court. A decree, making permanent the temporary injunction hitherto issued, was entered June 11, 1930. The commission noted an appeal to the Court of Appeals of the District of Columbia, filing its assignments of error and designation of the record, July 2, 1930.

After briefing and argument (December 1, 1930) the court of appeals, on February 2, 1931, reversed the decree of the supreme court. (47 F. (2d) 428.) As hitherto stated, the case involved the commission's power to compel the attendance of witnesses in investigations carried on by it (under sec. 6 of its organic act) to supply information to Congress. The court below had held that this power was limited to proceedings by the commission to determine unfair methods of competition (under sec. 5). In upholding the broader power of the commission, the court said, in part:

"The power of investigation conferred upon the commission by section 6 is different in character from the jurisdiction conferred by section 5. Section 6 contemplates an investigation for the collection of facts for the information of Congress in aid of the exercise of its legislative function, or for the President, in aid of recommending necessary legislation. The validity of this act has been upheld in many cases, and for the purposes of this inquiry will be regarded as conceded."

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"It will be observed that under section 9 the commission is empowered to issue subpœnas in any 'proceeding' or 'investigation' held under the general provisions of the Federal Trade Commission act. Inasmuch, therefore, as the resolution of the Senate amounts to an order upon the commission to conduct the investigation in question for the information of Congress, it is tantamount to a delegation of the power vested in the Senate itself to make such investigation to a subordinate agency of the Government clothed with that authority.

"In the case of McGrain *v.* Daugherty (273 U. S. 135) the authority of a committee of Congress conducting an investigation in aid of proposed or contemplated legislation to subpœna and compel the attendance of witnesses was upheld. The decision, however, in this case went no further than to uphold the power to compel the attendance of witnesses. The court avoided any expression as to the jurisdiction of such a committee to compel the production of documentary evidence. But that question is not necessarily involved in this case. The commission has jurisdiction to compel the attendance of the witness. In the event of his refusal to produce the documentary evidence described in the subpœna or to permit it to be used in evidence, an adequate remedy is afforded the commission by the terms of the statute. These are, therefore, not matters which are subject to investigation by a court of equity, or to restraint by injunction, as the whole matter can be determined in a proceeding where the commission invokes the aid of the proper district court to enforce its order."

On March 10, 1931, a decree was entered in the Supreme Court of the District of Columbia reversing the decree of June 11, 1930, previously referred to, vacating and setting aside the permanent injunction granted, and denying all prayers of and dismissing the bill. The Millers' National Federation subsequently delivered to the commission all the documents, including correspondence and minutes of meetings, called for in the subpœnas duces tecum issued by the commission in April, 1926. (Annual Report of the Federal Trade Commission, June 30, 1931, pp. 81–84.)

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